

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

HUMAIRA ALOKOZAY,
Plaintiff,
v.
MERRICK B. GARLAND, et al.,
Defendants.

No. 2:24-cv-00084-DJC-CKD (PS)

ORDER

On January 8, 2024, Plaintiff filed this action alleging violations pursuant to the Administrative Procedure Act (“APA”), 5 U.S.C. § 706; the Mandamus Act, 28 U.S.C. § 1361; and the Declaratory Judgment Act, 28 U.S.C. § 2201. (*See generally* ECF No. 1.) On March 14, 2024, Defendants filed a motion to dismiss pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. (ECF No. 7.) On April 3, 2024, the Court issued Findings and Recommendations recommending Defendant’s unopposed motion to dismiss be granted and this action be dismissed as moot. (ECF No. 9.) On April 12, 2024, Plaintiff filed a Notice of Voluntary Dismissal pursuant to Rule 41(a)(1). (ECF No. 10.)

Pursuant to Rule 41(a)(1), Plaintiff has a right to voluntarily dismiss this action prior to service by the Defendant of an answer or a motion for summary judgment. No Defendants have filed an answer or motion for summary judgment in this action. The Ninth Circuit has explained:

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1 Under Rule 41(a)(1), a plaintiff has an absolute right to voluntarily
2 dismiss his action prior to service by the defendant of an answer or a
3 motion for summary judgment. *Concha v. London*, 62 F.3d 1493,
4 1506 (9th Cir. 1995) (citing *Hamilton v. Shearson-Lehman American*
5 *Express*, 813 F.2d 1532, 1534 (9th Cir. 1987)). A plaintiff may
6 dismiss his action so long as the plaintiff files a notice of dismissal
7 prior to the defendant's service of an answer or motion for summary
8 judgment. The dismissal is effective on filing and no court order is
9 required. *Id.* The plaintiff may dismiss some or all of the defendants,
10 or some or all of his claims, through a Rule 41(a)(1) notice. *Id.*; *Pedrina v. Chun*, 987 F.2d 608, 609-10 (9th Cir. 1993). The filing of
11 a notice of voluntary dismissal with the court automatically
12 terminates the action as to the defendants who are the subjects of the
13 notice. *Concha*, 62 F.2d at 1506. Unless otherwise stated, the
14 dismissal is ordinarily without prejudice to the plaintiff's right to
15 commence another action for the same cause against the same
16 defendants. *Id.* (citing *McKenzie v. Davenport-Harris Funeral*
17 *Home*, 834 F.2d 930, 934-35 (9th Cir. 1987)). Such a dismissal
18 leaves the parties as though no action had been brought. *Id.*

19 *Wilson v. City of San Jose*, 111 F.3d 688, 692 (9th Cir. 1997). "Even if the defendant has filed a
20 motion to dismiss, the plaintiff may terminate his action voluntarily by filing a notice of dismissal
21 under Rule 41(a)(1)." *Concha v. London*, 62 F.3d 1493, 1506 (9th Cir. 1995) (citing *Miller v.*
22 *Reddin*, 422 F.2d 1264, 1266 (9th Cir. 1970)). Accordingly, Plaintiff's notice of voluntary
23 dismissal is effective, and this case shall be closed. The Court will withdraw its pending Findings
24 and Recommendations issued on April 3, 2024.

25 IT IS HEREBY ORDERED that:

26 1. The Court's April 3, 2024, Findings and Recommendations (ECF No. 9) are
27 WITHDRAWN;

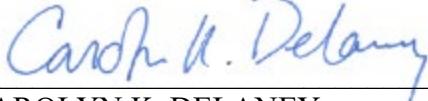
28 2. Plaintiff's Notice of Voluntary Dismissal (ECF No. 10) filed on April 12, 2024, is
29 effective the date the notice of dismissal was filed;

30 3. This case is DISMISSED in its entirety, without prejudice;

31 4. Defendants' Motion to Dismiss (ECF No. 7) is DENIED as moot; and

32 5. The Clerk of the Court is directed to close this case.

33 Dated: May 14, 2024



34 CAROLYN K. DELANEY
35 UNITED STATES MAGISTRATE JUDGE